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Remarks/Arguments

A. Status of Application

Claims 1-38 and 40-48 are pending and at issue in the present application.

Claims 1-38 and 40-48 stand rejected as obvious over various combinations of Triplett et al. (US 6,697,571), Demarest et al. (US 6,361,752), Gillett et al. (US 5,402,517), Lang (7,018,644), Ito et al. (6,391,329), and He et al. (US 2002/0136886).

For the reasons detailed herein below, applicants traverse all of the pending rejections.

B. Support for Amendments and Summary of Claims

In the present response, claims 1, 13, 25, and 37 have been amended, in part, to clarify that an outside heating element is not used or within the scope of the currently pending claims and application. Specifically, the language "at ambient room temperature" and "without being heated above ambient room temperature by a heating element" has been variously added to each of the independent claims.

Applicants respectfully submit that no new matter has been added by way of these amendments for the following reasons.

Specifically, the "[m]ere rephrasing of a passage does not constitute new matter," and as a result, "rewording of a passage where the same meaning remains intact is permissible." *In re Anderson*, 471 F.2d 1237 (CCPA 1973). Here, applicants have added the phrase "at ambient room temperature" to clarify that evaporation takes place at ambient room temperature and is not enhanced or facilitated by an outside heating element. Support for this amendment comes at least from the initial independent claims filed in the application, which state in relevant part: "a volatile liquid having an evaporation rate . . . measured with about 30% of the volatile liquid remaining at room temperature." Additionally, originally filed claim 10 recites the "volatile liquid evaporates in about 2 months under ambient conditions." One known definition of the phrase "ambient conditions" includes "environmental conditions" that are "normal for a given location."[1] Further, the phrase "room temperature" is also known as "ambient temperature."[2] It would be apparent to one having ordinary skill in the art that the phrases "ambient room temperature" and "ambient conditions" are

1 The Internet Encyclopedia of Science, *available at* http://www.daviddarling.info/encyclopedia/A/ambient.html
2 Reference.com *available at http://www.reference.com/browse/room%20temperature*

interchangeable and do not change the meaning of the claim. Therefore, adding the phrase "at ambient room temperature" does not change the meaning of any of the independent claims. For at least this reason, no new matter has been added by way of these amendments.

Moreover, a person having ordinary skill in the art at the time of the invention thereof would understand that a heating element is not used or contemplated for use with the device in the currently pending application to enhance or affect the volatile liquid evaporation rate. Those having ordinary skill in the art would agree with this statement for two reasons. First, it is well known in the art that wick-based air fresheners can be active or passive diffusers, wherein passive diffusers emit volatile actives into the atmosphere via naturally occurring capillary action without the aid of a component that affects or alters capillary action. In contrast, active diffusers alter the evaporation rate utilizing a component that enhances or slows naturally occurring volatilization. A well known type of active diffuser includes heating-based diffusers that contain electrical plugs that supply electrical energy to a heater, which in turn, heats the volatile active to control the rate of diffusion through the device. Second, the drawings clearly show that the device does not have a heater or heating element, and there is no mention of a heater or heating element in the specification, claims, or drawings. The omission of a heating element, by its very nature, is an indication that the device recited in the claims at issue and disclosed in the specification is not used with a heating element, but rather at ambient room temperature conditions.

In light of the evidence and arguments presented herein, it is clear that the amendments to the claims do not add new matter to the claims, but rather, clarify the conditions at which evaporation takes place in the device at issue. Therefore, applicants submit that no new matter has been added by way of these amendments.

C. Specific Traversals of Rejections Over The Applied References

All of the claims stand rejected over primary references that utilize a heating element to enhance or affect volatilization. The amendments to the pending claims clarify that the recited and claimed evaporation rates are at ambient room temperature and are not enhanced by a heating element. Therefore, the reasoning presented in the Office action that incorporates evaporation rates affected by a heating element is no longer applicable. Accordingly, the rejections are improper and should be withdrawn.

Specifically, the disclosure of Triplett focuses on a vapor dispensing device that varies the spatial relationship between a wick and a heater disposed thereon to minimize damage to the wick and effectively vaporize a vaporizable liquid by heating the wick. For example, Triplett discloses that a wick spaced from the top of a heater evaporates 9.73 grams of fragrance after 15 days of heating the wick to a temperature above room temperature (Table 2). Therefore, Triplett does not teach or suggest an article of manufacture including a volatile liquid, such that about 90% of the volatile liquid evaporates through the wick between one and two months under ambient conditions at room temperature when the wick is exposed to the surrounding environment without being heated above room temperature by a heating element, as recited in claims 1-36. Triplett also does not teach or suggest a volatile liquid having a relative evaporation rate between about 0.50 and about 4.0, wherein evaporation occurs without being heated above room temperature by a heating element, as recited in claims 36-38 and 40-48.

Respectfully, the undersigned urges that Triplett is not applicable to the above-noted claimed evaporation rates, because the results presented in Tables 1-3 in Triplett are for evaporation of fragrance through a wick that is proximate to a heater and not by drop shape analysis or at room temperature. The purpose of both the wick and the heater in Triplett is to increase evaporation transport of the liquid fragrance. In contrast, the above-noted claimed range of evaporation rates is measured and calculated by drop shape analysis independent of a wick, and at room temperature. A measurement of evaporation rates through a wick proximate to a heater is not the same thing as a measurement of evaporation rates as measured and calculated by drop shape analysis at room temperature.

Similarly, Demarest et al. and Gillett both utilize a heating element to facilitate evaporation of the volatile actives contained within the vapor-dispensing devices. Therefore, any reasoning in the pending Office action that relies on such references is inapplicable because the pending claims each recite that evaporation takes place without [the wick] being heated above room temperature by a heating element.

Further, although Lang, Ito, and He do not specifically utilize a heating element, such references still do not remedy the deficiencies of Triplett, Demarest, and Gillett. Namely, none of the aforementioned references disclose or suggest about 10 ml and about 15 ml of a volatile liquid

carried within an enclosed reservoir, the volatile liquid having an evaporation rate between about 5.0 x 10^{-9} and about 10.0 x 10^{-8} meters per second measured with about 30% of the volatile liquid remaining at room temperature, as measured and calculated by drop shape analysis and wherein about 90% of the volatile liquid evaporates through the wick between within one and two months under ambient conditions at room temperature when the wick is exposed to the surrounding environment without being heated above room temperature by a heating element.

To support a *prima facie* case of obviousness based on a combination of prior art elements, an examiner must establish "a finding that the prior art included each element claimed." Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* 72 Fed. Reg. 57,526 (Oct. 10, 2007). As noted above, the applied art fails to disclose or suggest each and every element specified by claims 1-38 and 40-48. Because the claims at issue are not obvious over Triplett, either alone or in combination with one or more of Demarest, Gillett, Lang, Ito, and He, the pending rejections thereover should be withdrawn and allowance of the claims at issue is respectfully requested.

Respectfully submitted,
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